

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Crim. File No. 06-184(4) (PJS/SRN)

Respondent,

v.

ORDER

Eva Aidee Rodriguez,

Petitioner.

This matter is before the Court on Petitioner Eva Aidee Rodriguez's Notice of Appeal, which the Clerk's Office construed as an Application for a Certificate of Appealability. Petitioner seeks appellate review of this Court's decision of December 11, 2007, dismissing the Petition she brought pursuant to 28 U.S.C. § 2255.

Petitioner is required to secure a Certificate of Appealability prior to appealing the dismissal of her § 2255 Petition. 28 U.S.C. § 2253(c)(1)(B); Fed. R. App. P. 22(b)(1). This Court cannot grant a Certificate of Appealability unless the Petitioner "has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); see also Tiedeman v. Benson, 122 F.3d 518, 522 (8th Cir. 1997). "Good faith and lack of frivolousness, without more, do not serve as sufficient bases for issuance of a certificate." Kramer v. Kemna, 21 F.3d 305, 307 (8th Cir. 1994). Instead, the Petitioner must satisfy a higher standard; she must show that the issues to be raised on appeal are "debatable among reasonable jurists," that different courts "could resolve the issues differently," or that the issues otherwise "deserve further proceedings." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citing Lozado

v. Deeds, 498 U.S. 430, 432 (1991) (per curiam)); Cox v. Norris, 133 F.3d 565, 569 (8th Cir. 1997).

In this matter, Petitioner did not set forth the grounds for her appeal in requesting leave to appeal. Instead, Petitioner merely filed a notice of her intent to take an appeal. Because the issues presented by the Petition were not frivolous, however, Petitioner deserves an opportunity to raise those issues in a properly presented Application for Certificate of Appealability.

Accordingly, **IT IS HEREBY ORDERED** that:

1. Petitioner's Application for Certificate of Appealability (Docket No. 251) is **DENIED WITHOUT PREJUDICE**; and
2. Petitioner may file a new Application on or before February 4, 2008.

Dated: January 3, 2008

s/ Paul A. Magnuson
Paul A. Magnuson
United States District Court Judge